On the second ground, it is argued that section 3(2) of the United Kingdom Administration of Justice Act limits action *in rem* to cases mentioned in section (1)(a) to (c) and (s), and it does not apply to paragraphs (g) and h). The plaintiffs' case does not, therefore, come under section 3(4) and, as such, the present action should be *in personam*. Having considered the provisions of section 3 as contained in *Halsbury's* Statutes of England, Volume 1, 3rd Edition, I am unable to agree that section 3(2) has the effect of excluding paragraphs (g) and (h) from the rights conferred by section 3(4). No authority is cited for the proposition expounded by the defendants. Having regard to *The Permina*[3] and *The Banco*,[4] I hold that the plaintiffs' case does come within the ambit of subsection (4) of section 3 of the Act.

The defendants' application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Ranjit, Thomas & Kula; Skrine & Co.*

PUBLIC PROSECUTOR v. CHEW SIEW LUAN

[O.C.J. (Abdul Hamid F.J.) October 29, 1980]
[Kuala Lumpur — Miscellaneous Criminal Application No. 7 of 1980]

Criminal Law and Procedure — Bail — Pregnant accused — Offence under section 39B of Dangerous Drugs Act 1952 — Non-bailable — Bail allowed under Criminal Procedure Code, s. 388(i) — Dangerous Drugs Act 1952, s. 39B(2).

Bail — Pregnant accused — Criminal Procedure Code, s. 388(i).

The accused was a pregnant woman who was due for delivery on July 1, 1980. She was charged for an offence under section 39B of the Dangerous Drugs Act 1952. On June 9, 1980 the learned President granted bail pending the hearing of the case. The learned President relied on the proviso to section 388(i) of the Criminal Procedure Code which permits the granting of bail to any person under the age of 16 years, any woman, or sick or infirm person charged with non-bailable offence carrying life imprisonment or death as penalty.

The Public Prosecutor appealed.

Held, dismissing the appeal: notwithstanding the provisions contained in section 41B of the Dangerous Drugs Act, 1952, it was still within the court's discretion to grant bail in non-bailable offences punishable with death or imprisonment for life to persons covered by the proviso to section 388(i) of the Criminal Procedure Code.

[Editorial Note: See note on "Mothers in Prison" in [1979] 1 M.L.J. xci.]

CRIMINAL APPLICATION.

Hashim Yusof (Deputy Public Prosecutor) for the applicant.

K. Kumaraendran (*Sethambaram* with him) for the respondent.

Abdul Hamid F.J.: (delivering oral judgment): The Public Prosecutor has applied for the following questions of law of public interest to be reserved for determination by the Federal Court under section 66 of the Courts of Judicature Act, 1964 —

"(i) Whether or not section 388 Criminal Procedure Code overrides the provision of section 41B of the Dangerous Drugs Act 1952 (Act 234).

(ii) If the answer to question (i) above is in the negative, whether it is right in law for bail to be granted in respect of a person charged for an offence under section 39B of the Dangerous Drugs Act 1952 (Act 234)."

The questions of law are said to have arisen in the course of an appeal by the Public Prosecutor against the order of the President, Sessions Court, Penang granting bail to Chew Siew Luan (f) accused of an offence under section 39B punishable under section 39B(2) of the Dangerous Drugs Act, 1952 (Act 234). The appeal was dismissed.

The accused was charged before the Sessions Court, Penang. On June 9, 1980 the learned President granted bail pending the hearing of the case. The Public Prosecutor appealed against the order.

It is not in dispute that the accused was a woman and was medically certified to be pregnant and due for delivery on or about July 1, 1980. In granting bail the learned President relied upon the proviso to section 388(i) of the Criminal Procedure Code which permits the granting of bail to any person under the age of 16 years, any woman, or any sick or infirm person charged with non-bailable offence carrying life imprisonment or death as penalty.

I dismissed the appeal as I formed the view that, notwithstanding the provisions contained in section 41B of the Dangerous Drugs Act, 1952, it was still within the court's discretion to grant bail in non-bailable offences punishable with death or imprisonment for life to persons covered by the proviso to section 388(i) of the Criminal Procedure Code. For ease of reference I reproduce hereunder section 388(i) of the Criminal Procedure Code and its proviso and section 41B(1) and (2) of the Dangerous Drugs Act, 1952 —

"388(i) When any person accused of any non-bailable offence is arrested or detained without warrant by a police officer or appears or is brought before a court, he may be released on bail by the officer in charge of the police district or by such court, but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life:

Provided that the court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

41B(1) Bail shall not be granted to an accused person charged with an offence under this Act —

(a) where the offence is punishable with death; or

(b) where the offence is punishable with imprisonment for more than five years; or

(c) where the offence is punishable with imprisonment for five years or less and the Public Prosecutor certifies in writing that it is not in the public interest to grant bail to the accused person.

(2) The provisions of subsection (1) shall have effect notwithstanding any other written law or any rule of law to the contrary."

Section 41B of the Act *inter alia* expressly prohibits the granting of bail to an accused person charged with an offence under the Act where the offence is punishable with death. Subsection (2) of section 41B provides that subsection (1) shall have effect notwithstanding any other written law or any rule of law to the contrary.

The second limb of section 388(i) does not make provision contrary to section 41B(1) in so far as it relates to an offence punishable with death. However, there is a proviso that confers discretion to release a

person accused of such offence if that person is under 16 years of age or a woman or a sick or infirm.

I form the view that the provision relating to criminal procedure must be construed strictly. To my mind section 41B(1) and (2) should not override the proviso to section 388(i) of the Criminal Procedure Code. I appreciate that it is a double-edged weapon and it may equally be used by the Public Prosecutor to advance the argument that it is the intention of the legislature to impose absolute statutory prohibition against the release of a person charged with offences covered by section 41B(1).

For myself I am inclined to think that section 41B(1) and (2) should not be construed as having the effect of fettering the court's absolute discretion to grant bail under the provision of the Criminal Procedure Code in cases covered by the proviso under section 388(i) of the Criminal Procedure Code. It is, of course, subject to the rule of law that the discretion must in each case be exercised judicially. For purposes of the present case, however, this is not strictly in issue.

It was for this reason that I dismissed the appeal. I do, however, appreciate that the point of law is of public interest and should, therefore, be fully considered and determined by the Federal Court.

Appeal dismissed.

Solicitors: *Kumar & Co.*

IMPERIAL GARMENTS SDN. BHD. v. LUCULENT SHIPPING COMPANY OF PANAMA & ORS.

[O.C.J. (Arulanandom J.) December 10, 1979; June 23; October 6, 1980 & January 6, 1981]

[Penang — Civil Suit No. 674 of 1977]

Shipping Law — Claim against Port Commission as third defendants — Reliance by Port Commission on statutory protection — Penang Port Commission (Amendment) Act, 1976, s. 75A(1) & (2)(a).

The plaintiffs as owners of 20 cartons of textile piece goods valued at $16,905.60 filed an action against the first and second defendants as owners and charterers of the vessel "Luculent" for non-delivery or in the alternative delivery in a damaged condition of the said goods shipped on board the said vessel.

The Penang Port Commission third defendants, were also included as a defendant as according to the pleadings in the alternative the first and second defendants did deliver the said goods to the third defendants who in breach of their duty failed to deliver the twenty cartons or in the alternative delivered the twenty cartons in a damaged condition to the plaintiffs.

The third defendants raised the preliminary objection that they were protected by statute and could not be held liable. They relied on section 75A(1) and (2)(a) of the Penang Port Commission (Amendment) Act 1976.

Held, dismissing the claim against the third defendants: (1) where the language of the law is clear and unambiguous the court cannot but give it the straightforward and ordinary meaning;

(2) the language and intention of the legislature give the Port Commission protection against claims arising out of their action as agents of shipowners and charterers of ships. The court cannot deny them the protection whatever the other consequences may be, far-reaching or otherwise.

CIVIL SUIT.

Lim Peng Siew for the third defendants/applicants.

Cecil Abraham for the plaintiffs/respondents.

Arulanandom J.: In this case the plaintiffs as owners of twenty cartons of textile piece goods valued at $16,905.60 filed an action against the first and second defendants as owners and charterers of the vessel "Luculent" for non-delivery or in the alternative delivery in a damaged condition of the said goods shipped on board the said vessel. The third defendants were also included as a defendant as according to the pleadings in the alternative the first and second defendants did deliver the said goods to the third defendants who in breach of their duty failed to deliver the twenty cartons or in the alternative delivered the twenty cartons in a damaged condition to the plaintiffs.

The third defendants raised the preliminary objection that they were protected by statute and could not be held liable. They thereupon applied by way of motion to have the claim against them dismissed with costs.

They relied on section 75A(1) and (2)(a) of Akta A338, Akta Surohanjaya Pelabohan Pulau Pinang (Pindaan) 1976, which came into force on February 26, 1976. Section 75A(1) and (2)(a) read as follows: —

"75A. (1) The Commission and any person duly authorized by it shall, in respect of any goods other than transshipment goods deposited with or placed in the custody or control of the Commission for the purpose of shipment or delivery, be deemed to be the agent of the owner of the vessel loading or discharging such goods irrespective of whosoever pays or is liable to pay any rates in respect of such goods.

(2) Neither the Commission nor any person duly authorized by it shall, in acting as an agent under the provisions of subsection (1), be liable —

(a) either in damages or in any other respect for any loss caused to any person by reason of short delivery of any goods deposited with or placed in the custody or control of the Commission or any failure by the Commission to deliver or account for them."

The third defendants averred that in view of the above law they could not be held liable in damages for any loss whatsoever unless the goods were for transhipment (which was not the case here).

The plaintiffs' first answer to the third defendants' plea was that if there was such a defence in law it ought to have been pleaded which was not done in the present case. The third defendants promptly remedied this defect by applying to court for leave to amend the defence which the court granted. In the amended defence the third defendants included a paragraph 8(a) which reads as follows: —

"8(a). The third defendants will aver that the goods claimed upon are not transhipment goods and accordingly the third defendants are protected from liability under section 75A(1) and 2(a) of the Penang Port Commission (Amendment) Act, 1976, Act A338, which came into force on February 27, 1976."

Hence the plaintiffs could not prevent the third defendants relying on their plea purely from a procedural stand.

The plaintiffs then sought to establish that the protection of the law given to the third defendants